

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.19481 OF 2005

Dated 2nd September 2005

Between:

B.Tata Rao S/o.Dharmaiah, aged 53 years,
Clerk, Roll No.15388, Indian Overseas Bank,
Kalyannagar Branch, Hyderabad.

...Petitioner

And

The Assistant General Manager,
Indian Overseas Bank, Central Office, 763 Annasalai,
Chennai & 3 others.

...Respondents

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ORDER:

The petitioner was employed as a clerk in the Indian Overseas Bank. Disciplinary proceedings were initiated, against him, vide charge sheet dated 27.6.2003, with certain allegations. The petitioner submitted his explanation, and denied the allegations against him. Thereupon, the bank appointed an Enquiry Officer, and the departmental enquiry was conducted. The Enquiry Officer submitted

a report, dated 12.10.2004, holding that the petitioner is guilty of the charges leveled against him. On the basis of the same, the bank issued a show-cause to the petitioner, directing him to explain as to why the penalty of dismissal from service, shall not be imposed against him. The petitioner submitted an explanation, and ultimately, the bank passed an order dated 30.7.2005, compulsorily retiring the petitioner from service. The same is challenged in this writ petition.

Sri P.V.Krishnaiah, learned counsel for the petitioner, submits that a material irregularity was committed, during the course of departmental enquiry. He submits that after conclusion of the examination of witnesses, the presenting officer filed detailed written submissions, before the enquiry officer, and the latter in turn, addressed a letter dated 14.7.2004, requiring the petitioner to respond to the written submissions, within 15 days. He states that though the petitioner submitted representations for extension of time, no orders were passed therein, and ultimately the petitioner submitted his written submissions on 8.11.2004, by which time, the report was already submitted. He contends that there was infraction of the principles of natural justice, and the entire proceedings are vitiated.

Sri A.Krishnam Raju, learned counsel for the respondents, on the other hand, submits that the writ petition is not maintainable, because there is an effective alternative remedy of appeal. He further contends that the question, as to whether the petitioner made representations, requesting time for submission of written arguments, or whether he committed any default in this regard, can be found out only in an appeal. Learned counsel submits that the disciplinary authority gave adequate opportunity to the petitioner, and it is the latter, who did not avail it.

Admittedly, the rules provide for a regular appeal, against the order of compulsory retirement. It is true that a writ petition can straight away be filed, against the orders imposing penalty in certain cases, where the order is passed without giving an opportunity to the affected party, or where it is passed by an authority, not conferred with power. In the instant case, it is complained that the enquiry officer did not afford adequate opportunity to the petitioner. Had it been a case where the petitioner was not put on notice at all, this court would not have found it difficult to

interfere. The grievance is only as to the grant of opportunity to file written submissions, in response to those submitted by the presenting officer. The questions as to whether the petitioner made any representation for extension of time, whether the enquiry officer granted any such extension, and whether the petitioner failed to avail such opportunity etc, can be answered, or determined, only on a perusal of the record. The appellate authority would be in a better position to appreciate these aspects. It is impermissible to undertake such an exercise, in a writ petition, filed under Article 226 of the Constitution of India. If on a perusal of the record it emerges that the petitioner was denied of adequate opportunity, necessary relief can certainly be granted.

For the foregoing reasons, the writ petition is disposed of, leaving it open to the petitioner, to avail the remedy of appeal. If the petitioner raises any ground, as to denial of opportunity, during the departmental proceedings, the appellate authority shall bestow its specific attention to that aspect, and record a definite finding, dealing with the contentions of the petitioner. The appeal shall be disposed of within three months, from the date of its presentation. There shall be no order as to costs.

2nd September 2005

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